Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111
and	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	CC Docket No. 93-23 RM-7931
and	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the INTELSAT K Satellite	File No. ISP-92-007

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: July 16, 1997 **Released: July 18, 1997**

Comments Date: August 21, 1997
Reply Comment Date: September 5, 1997

By the Commission: Commissioner Chong issuing a statement.

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I. INTRODUCTION

1. With this Further Notice of Proposed Rulemaking, we seek additional comment on a framework to allow satellites licensed by other countries to provide service in the United States. We initially raised these issues in a Notice of Proposed Rulemaking in our *DISCO II* proceeding issued on May 14, 1996.[1] In that Notice we proposed, in essence, to examine whether U.S. satellites have "effective competitive opportunities" in a foreign market before allowing a satellite licensed by that foreign country to serve the United States (the "ECO-Sat" test). In light of the recent conclusion of a World Trade Organization Agreement on Basic Telecommunications Services ("WTO Basic Telecom Agreement"), this Further Notice revisits this proposal, and asks for comment on how best to open U.S. markets in a manner consistent

[1] *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, ("*DISCO II*"), Notice of Proposed Rulemaking, 11 FCC Rcd 18178 (1996). DISCO is an acronym for Domestic International Satellite Consolidation.

with our goal of promoting a competitive satellite market in the United States.[2] We also seek comment on whether, and to what extent, our *DISCO II* proposals should be changed both with respect to countries and services covered by the WTO Basic Telecom Agreement and those that are not.[3]

2. Commitments made under the WTO Basic Telecom Agreement itself and its framework, the General Agreement on Trade in Services (GATS),[4] will fundamentally improve conditions of competition in satellite services. We believe the liberalized global telecommunications market contemplated by the WTO Basic Telecom Agreement and the developing competitive conditions of global telecommunications warrant substantial changes, in certain circumstances, in how we consider entry by non-U.S. satellites into the United States.[5] In particular, we propose to establish a presumption that competition will be promoted, and therefore, that no ECO-Sat analysis is required, in evaluating whether to permit satellites licensed by WTO members to provide services covered by the U.S. schedule of commitments under the WTO Basic Telecom Agreement ("covered services") within the United States and between the United States and other WTO members. We propose to retain our proposed ECO-Sat test for non-WTO members, intergovernmental organizations, and services for which the United States has taken an exemption from most-favored-nation obligations under the WTO Basic Telecom Agreement ("non-covered services").[6] Finally, as we do with all other satellite applications, we propose to consider whether grant of an application to access a non-U.S. licensed satellite will otherwise serve the public interest, convenience, and necessity.

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[2] Rules and policies for the provision of international terrestrial, resale, and submarine cable services in the post-WTO Basic Telecom Agreement environment are addressed in a separate Notice of Proposed Rulemaking. *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, FCC No. 97-195, released June 4, 1997. *See also Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873 (1995) *("Foreign Carrier Entry Order"), recon. pending.*

[3] In this Further Notice, we are revisiting proposals in the *DISCO II* Notice, but are not yet addressing specific comments made on the Notice. Comments to both the *DISCO II* Notice and this Further Notice will be fully addressed in the *DISCO II* Report and Order.

[4] General Agreement on Trade in Service, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 1167 (1994) (hereinafter "GATS").

[5] Throughout this Further Notice, a "non-U.S." satellite is one that does not hold a commercial space station license from the Federal Communications Commission. By contrast, a "U.S." satellite is a commercial space station licensed by the Commission.

[6] The United States has taken an exemption from most-favored-nation obligations for one way transmission of direct-to-home (DTH) television service, direct-broadcast satellite (DBS) television service, and of digital audio service. *See* para. 20, *infra*.

II. BACKGROUND

A. *DISCO II* Notice of Proposed Rulemaking

3. The *DISCO* II Notice was guided by our commitment to foster efficient and innovative satellite communications services for U.S. users through fair and vigorous competition among multiple service providers, including non-U.S. service providers. Broader market access in satellite services should lead to greater competition here and abroad, ensuring the benefits of effective competition to both U.S. and worldwide users: lower prices, better service, and more innovative service offerings. Consequently, we proposed in the *DISCO II* Notice to adopt a uniform framework for permitting non-U.S. satellite systems to serve the United States. These authorizations had previously been awarded on an *ad hoc* basis. By formalizing our policy, we sought to facilitate greater access to non-U.S. satellites.

4. Specifically, we proposed to evaluate applications for access to non-U.S. satellites to serve the United States by determining whether U.S. satellite operators had "effective competitive opportunities" in the satellite service market in the licensing or coordinating administration ("home market"). We also proposed to consider whether such opportunities existed on the "route markets" that the foreign satellite operator sought to serve from earth stations in the United States. This evaluation of competitive opportunities in home and route markets was called the "ECO-Sat" test.[7] In making this evaluation, we proposed to examine both *de jure* and *de facto* constraints on entry by U.S. satellite operators.[8] The *DISCO II* Notice included alternative regulatory approaches for considering whether to permit access to the U.S. domestic market by INTELSAT and Inmarsat or any affiliate of these organizations.[9]

5. In the *DISCO II* Notice, we questioned whether the ECO-Sat test was adaptable to all satellite services.[10] We recognized that, with certain global communications systems such as mobile satellite systems, landline facilities may be used in the United States instead of satellite links. For example, a call originating in an office in the United States to a mobile-satellite service (MSS) handset in Asia could travel to Asia by landline before any satellite communication occurs. In that case, we would not have an earth station application or other vehicle to trigger an ECO-Sat analysis. Consequently, we tentatively proposed to analyze "effective competitive opportunities" in the MSS market by measuring whether some "critical

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[7] *See DISCO II* at paras. 22-32.

[8] *Id.* at paras. 37-42.

[9] *Id.* at 62-74.

[10] *Id.* at paras. 44-47.

mass" of foreign markets are open to U.S.-licensed MSS systems before we would permit a non-U.S. MSS system to provide *any* service in the United States.[11]

6. We also proposed to consider, with guidance from the Executive Branch when appropriate, any other public interest concerns relevant to the decision to permit access by non-U.S. systems, including the significance of the proposed entry to the promotion of competition in the United States and the global satellite service market; issues of national security, law enforcement, foreign policy, and trade policy; and issues of spectrum availability and coordination.[12]

B. WTO Basic Telecommunications Agreement

7. The WTO Basic Telecom Agreement was concluded February 15, 1997 under the framework established by the GATS.[13] This agreement is not a single accord or document, but rather a series of commitments by individual countries to open their markets for basic telecommunications services. Countries participating in this agreement have committed to assume obligations under the GATS in the basic telecommunications sector.

8. The GATS consists of a framework agreement that sets forth general obligations, annexes on specific services sectors, and schedules of commitments for each signatory. Pursuant to the GATS, each country participating in the Agreement is obligated to honor both its general GATS obligations and its specific commitments under the agreement with respect to the services and service suppliers of WTO members seeking entry into its basic telecommunications market. The most-favored-nation principle of the GATS requires that each WTO member treat services and service suppliers of one WTO member no less favorably than it treats services and service suppliers of all other WTO members. Under the national treatment obligation of the GATS, a WTO member must treat foreign services and service suppliers seeking to serve its country no less favorably than it treats its national services and service suppliers.

9. Countries participating in the WTO Basic Telecom Agreement agree to abide by these general principles for each sector of the basic telecommunications market in which they have made a commitment. Each country submitted its offer as a "schedule" of commitments, which lists the service sectors it binds itself to open. The schedule of

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[11] *Id.* at para. 47.

[12] *Id.* at para. 48.

[13] The GATS was concluded as part of the Uruguay Round of multilateral trade negotiations in December 1993.

commitments ultimately adopted by each country may also include limitations on market access or national treatment, or exemptions from most-favored-nation treatment.[14]

10. Sixty-nine WTO member countries made market access commitments under the Agreement. These countries represent approximately 95% of telecommunications revenues worldwide. Importantly, a significant portion of international telecommunications traffic is transmitted over satellite facilities. Forty-nine WTO members, including the United States, have committed to completely open their markets to competition in satellite services, either on January 1, 1998, or on a phased-in basis.[15]

11. Further, the commitments of the United States and 54 other governments under the WTO Basic Telecom Agreement include the Reference Paper on Pro-Competitive Regulatory Principles ("Reference Paper").[16] In addition, ten governments committed to honoring most of the principles in the Reference Paper. The Reference Paper obligates the governments that have adopted it as part of their schedule of commitments to maintain measures to prevent anticompetitive conduct, to make licensing criteria publicly available, and to allocate and use scarce resources (including frequencies) in a transparent and non-discriminatory manner, among other things. These principles are already applied in the United States under the Communications Act of 1934 and the Telecommunication Act of 1996.

12. Commitments made under the WTO Basic Telecom Agreement, including those of the United States, are binding and can be enforced through WTO dispute settlement. Thus, if a WTO member government fails to honor its market access commitments to a U.S. satellite system or to comply with the regulatory principles to which it has committed itself, the U.S. government may initiate a trade dispute at the WTO against the member government. The remedies available if the plaintiff prevails do not require specific performance (*i.e.*, a

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[14] Schedules of commitments of countries participating in the Agreement may be viewed through the World Wide Web site of the World Trade Organization, www.wto.org/wto/whats_new/tele/gbtoff.htm. This site may also be accessed through a link on the International Bureau Home Page at the Commission's Web site, www.fcc.gov/ib.

[15] The U.S. schedule or commitments identifies Section 310 of the Act, which sets forth restrictions on foreign ownership and the scope of the Commission's discretion in applying such restrictions, as a limitation on market access. The United States similarly listed as a market access limitation Comsat's exclusive rights to links with INTELSAT and Inmarsat. Under the Communications Satellite Act of 1962 and the International Maritime Satellite Telecommunications Act of 1978, Comsat is the U.S. Signatory to INTELSAT and Inmarsat, and provides INTELSAT and Inmarsat international space segment capacity to users in the United States.

[16] The Reference Paper can also be accessed through the World Wide Web site specified in footnote 14.

requirement that the defendant fulfill its trade commitment). Rather, the plaintiff may take trade retaliation against the defendant in any goods or services sector.

III. DISCUSSION

A. Impact of WTO Basic Telecom Agreement on *DISCO II*

13. The WTO Basic Telecom Agreement will have an unprecedented impact worldwide in opening basic telecommunications markets to competition. When fully implemented, commitments made by WTO members under the WTO Basic Telecom Agreement should substantially advance the Commission's goal of promoting a competitive satellite market in the United States and abroad. Consequently, we propose to forego an ECO-Sat analysis with respect to requests to serve the United States using satellite systems licensed by WTO member countries ("WTO satellite systems") to provide covered services within the United States or between the United States and other WTO members. Specifically, we would grant these applications on a streamlined basis, provided they otherwise comply with Commission rules and policies, under a presumption that we can rely on competitive market forces to enhance competition in satellite services. An opposing party would have the burden of demonstrating that the grant would pose a very high risk to competition in the United States satellite market that could not be addressed by conditions that we could impose on the authorization. Obviously, the Commission could, independent of any comments, determine that the presumption of enhanced competition is overcome by evidence of a very high risk of competitive harm.

14. In contrast, we do not believe that the WTO Basic Telecom Agreement achieves our *DISCO II* objectives with respect to entry by satellite systems that are licensed by non-WTO member countries, operated by intergovernmental satellite organizations (IGOs), or engaged in the delivery of services for which the United States has taken a most-favored-nation exemption from the WTO Basic Telecom Agreement. As we discuss in greater detail below, the WTO Basic Telecom Agreement does not alter the competitive environment with respect to these satellite systems and services. Consequently, we propose to conduct an ECO-Sat test in these circumstances.

B. Framework

15. We propose to use the same general approach as described in the *DISCO II* Notice to evaluate, in a post-WTO Agreement environment, whether to permit non-U.S. licensed satellites to serve the United States. That is, we propose first to consider whether grant is consistent with our goal of facilitating competitive market access and the corresponding benefits of open markets to users. Next, we propose to examine other factors that bear on whether grant of a request to serve the United States using a non-U.S. satellite is in the public interest, convenience, and necessity, consistent with Sections 303(r) and 309 of

the Act.[17] Last, in light of our continuing goal to promote fair and effective competition, we propose that any foreign satellites serving the United States comply with all requirements imposed on U.S.-licensed systems, including prohibiting entering into exclusionary arrangements with other countries. We discuss each of these in turn.

1. ECO-Sat Test

a. WTO-Covered Services and Countries

16. Forty-nine countries, including the United States and its major trading partners, made market access commitments under the WTO Basic Telecom Agreement to open satellite services to competition. These commitments generally involve the mobile satellite services and those fixed-satellite services that do not involve one-way satellite television and radio services.[18] The services covered by the WTO Basic Telecom Agreement represent an emerging, rapidly developing sector of the global satellite market. The WTO Basic Telecom Agreement will help ensure that this sector will develop globally in a procompetitive environment, fostering the greatest possible availability of efficient and innovative satellite communications services for users around the world. In short, many of the goals enunciated in the *DISCO II* Notice will be realized when the Agreement is implemented by WTO member countries. In addition, all 49 countries making satellite commitments also agreed to be bound by the procompetitive principles described in the Reference Paper, giving additional assurance that the global satellite sector will develop in a procompetitive fashion.

17. We recognize that a number of WTO members delayed or limited their commitments under the Agreement, while others made no commitments whatsoever. However, these countries are bound by the general obligations of the GATS that regulatory decisions be reasonable, objective, transparent, and non-discriminatory.[19] Further, these countries are also bound to extend most-favored-nation treatment to services or service suppliers of other WTO members, unless a specific limitation has been taken, and are subject to the dispute resolution process contained in the GATS.[20] Accordingly, the Commission proposes to rely on the broad obligations under the GATS and on market access commitments under the WTO Basic Telecom Agreement to achieve the benefits of competition for U.S. consumers and competitors, and to presume that provision of covered services within the

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[17] 47 U.S.C. §§ 303(r) and 309.

[18] *See* para. 20, *infra.*

[19] *See* GATS Art. VI.

[20] *Id.* at Art. XXIII.

United States or between the United States and other WTO members will foster competition in the United States.

18. Consequently, we tentatively conclude that we should streamline our review process for evaluating requests to provide covered services in the United States using WTO member satellite systems to provide service within the United States or between the United States and other WTO member countries. Specifically, we propose not to apply any ECO-Sat analysis in these cases. Rather, opposing parties must show that grant would pose a very high risk to competition in the United States satellite market that could not be cured by conditions we could place on the license. If the opposing party meets its burden, we may deny access to the United States. We request comment on this proposal.

19. If the anticompetitive concerns can be addressed by license conditions, we seek comment on the measures we should consider in our efforts to minimize the likelihood of anticompetitive behavior. For systems to which access has already been authorized, for example, we could condition the authorization of additional earth stations on the absence of factors that we have identified as being anticompetitive in that particular case. Another approach may be to impose stricter reporting requirements in authorizing systems for which there is a greater likelihood of competitive harm. We ask that commenters specifically address the benefits or disadvantages of these or any other proposals for minimizing anticompetitive behavior in accessing non-U.S. satellite systems, with particular attention given to the principles in the Reference Paper.

b. Services Exempt from Most-Favored-Nation Obligations

20. The U.S. schedule of commitments under the WTO Basic Telecom Agreement includes an exemption from most-favored-nation obligations for direct-to-home Fixed-Satellite Service (DTH-FSS), Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS). Under the exemption, the United States is not required to extend most-favored nation treatment in evaluating applications to access non-U.S. satellite systems for these non-covered services. The United States took this exemption because the commitments made by other WTO members, including many of its major trading partners, do not provide for market access for DTH-FSS, DBS, or DARS. This situation created a potential market access imbalance between the United States and its largest trading partners related to the different ways in which the United States and these countries regulate DTH-FSS, DBS, and DARS. The United States resolved this imbalance by taking an exemption from most-favored-nation obligations of the GATS for these services.

21. As a result, the WTO Basic Telecom Agreement does not advance our goal of promoting a competitive satellite marketplace for these services. We therefore propose to apply the ECO-Sat test to all requests for access by non-U.S. satellite systems for delivery of services for which the United States has taken a most-favored-nation exemption under the

GATS. We seek comment on the continuing need to encourage open markets for these services, and on the application of an ECO-Sat test to achieve that goal. We ask commenters whether the ECO-Sat test should be modified in light of the expected impact of the WTO Basic Telecom Agreement on the degree of openness and competition in foreign markets. We also propose, as discussed below, that we not apply an ECO-Sat analysis if a bilateral agreement exists for these services.

22. In light of certain comments received in response to the initial *DISCO II* Notice, we wish to clarify that the specific foreign ownership and public interest rules that will be applied to DTH-FSS and DBS services will be addressed in separate Commission proceedings. Commenters to the initial *DISCO II* Notice suggested that foreign ownership and content-related issues should be considered in assessing competitive opportunities for U.S. DTH-FSS and DBS operators in the home market of a non-U.S. satellite system.[21] These matters are policy issues of first impression for the Commission, and are the subject of a number of ongoing rulemaking and adjudicatory proceedings.[22] Because the outcome of those proceedings may affect the relevance of foreign ownership and content issues to our ECO-Sat analysis, we believe it is premature to include these issues in the ECO-Sat analysis prior to completion of those proceedings. Grant of any authorizations to provide DTH-FSS and DBS service prior to resolution of these issues will be considered on a case-by-case basis and will be conditioned on their final outcome.

c. Non-WTO Member Satellites

23. We tentatively conclude that an ECO-Sat test should be applied with respect to the home markets of satellites licensed by non-WTO member countries, regardless of whether the route market is a WTO or non-WTO member. Further, we propose to apply a separate ECO-Sat test to the route market when the route market is a different non-WTO member. Neither the United States nor WTO members have any obligations to non-WTO member

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[21] *See* comments of HBO; Columbia; and News Corp.

[22] Petitions to deny transfer of control of applications held by MCI to BT have requested that an ECO-Sat analysis apply in considering foreign ownership in excess of permissible levels specified in Section 310 of the Act and in Section 100.11 of the Commission's rules. *See* GEN Docket No. 96-245. The Commission has sought further comment on an earlier Notice of Proposed Rulemaking on public interest obligations for DBS and DTH services imposed by the 1992 Cable Act. *See* Public Notice, MM Docket No. 93-25, 12 FCC Rcd 2251 (1997), 62 FR 9153 (February 28, 1997). The International Bureau held a roundtable on DBS service rules, in preparation for a Commission rulemaking that will consider DBS service rules. *See* Public Notice, Report No. IN 97-8, DA 97-616 (rel. March 26, 1997). In addition, the Executive Branch has urged us to consider foreign ownership restrictions and public interest criteria for subscription DBS services in a rulemaking proceeding prior to reaching any such determinations in an adjudicatory proceeding. *See* Letter from Departments of State, Commerce, and Trade in File No. 73-SAT-P-96 (May 5, 1997).

countries under the GATS or the WTO Basic Telecom Agreement. Further, non-WTO member countries have not assumed obligations under the WTO Basic Telecom Agreement specifically or under the GATS generally. Therefore, they have made no binding commitments to open their satellite services markets or to abide by procompetitive regulatory principles. Under these circumstances, eliminating the ECO-Sat test for evaluating requests for use of non-WTO satellite systems would not advance and could hinder our overall goals for promoting competition in satellite services. Applying the ECO-Sat test in such cases will allow us to examine whether our overall objectives can be achieved with respect to specific requests for entry.

24. While we believe that the ECO-Sat analysis continues to be relevant with respect to entry by satellites licensed by non-WTO member countries, we seek further comment on whether the test as proposed in the *DISCO II* Notice should be modified in any way. Commenters proposing modifications to the ECO-Sat test should be specific in stating the changes they believe to be appropriate and in stating the reasons for the changes they propose. For example, the *DISCO II* Notice asserts that a home or route market analysis may present particular difficulties as applied to mobile satellite services (MSS), and as an alternative, proposes to examine whether U.S. operators have market access in a critical mass of markets served by the non-U.S. system seeking entry into the U.S. market.[23] There was no consensus among *DISCO II* commenters concerning this approach. We seek additional comment on this and other possible approaches for evaluating requests for use of non-WTO satellite systems to deliver fixed-satellite and mobile satellite services. Commenters should specifically address the advantages and disadvantages of a route-by-route approach.

d. Non-WTO-Member Markets Served by WTO-Member Satellites

25. Finally, there may be cases where an applicant proposes to provide service between the United States and a non-WTO member country using a satellite licensed by a WTO member country. We request comment on whether we should apply an ECO-Sat test to the non-WTO route markets to be served. In these cases, the non-WTO member is under no obligation to open its telecommunications markets or to follow the general procompetitive practices imposed by the GATS. Applying an ECO-Sat test to the non-WTO route markets would allow us to promote effective competition through broader market access, consistent with our DISCO II goals.

26. This could, however, have implications for U.S.-licensed satellites. In the *DISCO I* Report and Order,[24] we held that all U.S. licensed satellites could provide service to

[23] *DISCO II* at paras. 44-47.

[24] *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed-Satellite and Separate International Satellite Systems*, 11 FCC Rcd 2429 (1996).

any country without further Commission authorization, as long as the operator obtained all approvals required from the foreign country. Under the WTO Basic Telecom Agreement, the United States has committed to national treatment for WTO-member satellites. If we decide to apply an ECO-Sat test to non-WTO route markets, it might also be necessary to apply this approach to U.S.-licensed satellites. This would require U.S. satellite licensees to obtain further Commission authorization before serving a non-WTO country, limiting the flexibility afforded by *DISCO I.*

27. Alternatively, we could give WTO satellites the same flexibility as we now give U.S. satellites. This would mean that we would not apply an ECO-Sat test in cases involving WTO member satellites, regardless of the route market. It is possible, however, that our competition concerns relating to non-WTO route markets can be remedied by prohibiting non-U.S. licensed satellites from entering into exclusionary arrangements with the country in which they wish to operate, as we do with U.S. licensed systems.[25]

28. We request comment on the advantages and disadvantages of these alternatives. Commenters should address whether a restriction on exclusionary arrangements would adequately prevent anticompetitive distortions in the United States, and promote competition in markets that have not committed to the GATS, or the WTO Basic Telecom Agreement and Reference Paper. We also seek comment on other alternatives for harmonizing the treatment of U.S. licensed and WTO member satellite systems serving non-WTO routes under our rules.

e. Bilateral Agreements

29. In pursuing our overriding goal of enhancing competition in all satellite services by opening global markets, we may in the future enter into individual agreements for the provision of satellite services with other countries. We expect that any such agreements would give U.S. satellite operators market access to that country on a national treatment basis, protect our ability to manage spectrum efficiently through our technical requirements, and ensure that other important public interest objectives are met. Indeed, we recently completed a bilateral agreement with Mexico for DTH-FSS and DBS services that addressed these matters.[26]

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[25] *See* paras. 41-43, *infra.*

[26] *See* Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Transmission and Reception of Signals from Satellites for the Provision of Satellite Services to Users in the United States of America and the United Mexican States, April 26, 1996. Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services in the United States of America and the United Mexican States, November 8, 1996.

30. Accordingly, we propose to evaluate applications covered by bilateral satellite services agreements in the same manner in which we propose to treat applications for access to WTO member satellite systems that deliver covered services. That is, we propose not to apply the ECO-Sat test as part of our analysis in these cases, and will place the burden on parties opposing such requests to demonstrate that grant of access to the non-U.S. satellite would pose a very high risk to competition in the United States satellite market that could not be addressed by conditions on the license. We seek comment on this proposal.

f. Intergovernmental Satellite Organizations (IGOs)

31. In the *DISCO II* Notice, we noted certain analytical problems with the application of the ECO-Sat test to intergovernmental satellite organizations (IGOs), such as INTELSAT and Inmarsat. Since no single nation can realistically be deemed the home market of an IGO, we proposed to evaluate access based on the openness of the various route markets served by the IGO. In the alternative, we proposed to consider access based on the total investment shares of member governments that permit U.S. satellites to provide analogous services in their markets, or on a determination that IGO service would not diminish effective competition in the United States.[27]

32. As intergovernmental treaty-based satellite organizations, IGOs do not benefit from the WTO Basic Telecom Agreement, which covers only services or service suppliers of WTO member countries. Thus, the United States has no market access, national treatment, or most-favored-nation obligations to IGOs.[28] Nevertheless, many INTELSAT and Inmarsat members have made some level of market access commitment for satellite services under the WTO Basic Telecom Agreement. Forty-nine out of 79 Inmarsat member countries made WTO offers. All 39 countries that have made market access commitments for mobile satellite services are Inmarsat members. Fifty of 140 INTELSAT members made full or partial market access commitments for satellite services under the WTO Basic Telecom Agreement; these members, including the United States, represent approximately 80% of ownership by shares. In addition, the IGOs already have market access for routes to virtually every country from the United States.

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[27] *DISCO II* at paras. 62-70.

[28] In *In the Matters of Provision of Aeronautical Services via the INMARSAT System and Aeronautical Radio, Inc. and the Air Transport Association of America Request for Waiver*, 11 FCC Rcd 5330 (1996), we asked whether we should allow users to access INMARSAT for aeronautical communications during the domestic legs of international flights. This question involves only aeronautical services on flights originating in other countries, and as such is narrower than the scope of this proceeding. While this question could be mooted by a decision in this proceeding to allow INMARSAT to provide domestic service in the United States, it can, in any event, be resolved independently. We expect to issue an Order in this proceeding shortly.

33. In view of these facts, we ask commenters specifically to address which of the route market and critical mass alternatives presented in the initial *DISCO II* Notice is more appropriate in evaluating the use of IGO satellites to provide U.S. domestic satellite services. Commenters advocating a "critical mass" approach should address whether the WTO Basic Telecom Agreement will result in a "critical mass" of open markets among IGO member countries that is sufficient enough for us to presume that we can rely on competitive market forces. We also renew our request that commenters address what our policy should be toward intergovernmental satellite organizations other than INTELSAT and Inmarsat.

g. Future IGO Affiliates

34. In the *DISCO II* Notice, we proposed to treat affiliates of intergovernmental satellite organizations as we would treat any other non-U.S. satellite system. If they are companies of WTO member countries, IGO affiliates incorporated and headquartered in a WTO member country would receive the same treatment as any other company of a WTO member country. Specifically, we noted, however, that the treaty-based heritage of and possible government ownership in these affiliates could also result in privileged or exclusive access to national markets around the world and thereby diminish effective competition in the U.S. market.[29]

35. As with WTO member satellite systems, we propose in this Notice not to apply an ECO-Sat test to applications to use satellites of IGO affiliates if the affiliates are companies of WTO-members. However, the unique relationship between intergovernmental satellite organizations and their affiliates provides an opportunity for behavior that could pose a very high risk to competition in satellite services to, from, and within the United States. For this reason, in the WTO negotiations, the United States preserved its ability to protect competition in the U.S. market, including the possibility of not granting market access to a future privileged IGO affiliate. Indeed, the Executive Branch has stated that it intends to enforce U.S. antitrust law, regulation, policy, and practice in implementing the WTO Basic Telecom Agreement. Specifically, the U.S. Trade Representative has said the United States will not permit market access to a future privatized affiliate, subsidiary, or other form of spin-off from an IGO that would likely lead to anticompetitive results.[30]

36. Accordingly, upon appropriate application, we propose to review the affiliate's relationship to its IGO parent to ensure that grant would not pose a significant risk to

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[29] *DISCO II* at paras. 71-74.

[30] *See* Letter from Charlene Barshefsky, U.S. Trade Representative-Designate to Ken Gross, President and Chief Operating Officer, Columbia Communications (Feb. 12, 1997). This letter, and identical letters to the Chief Executive Officers of Orion Satellite Corporation and Pan American Satellite Corporation, have been placed in the record of the *DISCO II* proceeding.

competition in the U.S. satellite market, and that the affiliate is structured to prevent such practices as collusive behavior, cross-subsidization, and denial of market access, and that the affiliate does not benefit directly or indirectly from IGO privileges and immunities. This review could result in denial of license or conditioning access to the U.S. market by the IGO affiliate. This is consistent with the Reference Paper, which allows us to maintain appropriate measures to prevent major suppliers from engaging in anticompetitive practices, including cross-subsidization.[31] We note that the application of the WTO Basic Telecom Agreement, effective January 1, 1998, is prospective; thus our proposals in this Further Notice would apply to evaluation of requests to use satellites of future IGO affiliates. We seek comment on this tentative conclusion.

2. Other Public Interest Considerations

a. In General

37. The Commission may condition or deny authorizations to provide satellite services based on other important public interest factors. Section 309(a) of the Communications Act mandates that we determine that grant of an application would serve the public interest, convenience and necessity.[32] The WTO Basic Telecom Agreement does not affect these considerations, which apply with respect to all radio licenses granted by the Commission. Conduct warranting denial of an authorization may include adjudicated violations of U.S. antitrust law or other competition laws, fraudulent representations to governmental units, and criminal misconduct involving false statements or dishonesty.[33] As we noted in the *DISCO II* Notice and reiterate here, national security, law enforcement, foreign policy, and trade concerns brought to our attention by the Executive Branch may also require that we condition or deny a particular application. We seek comment on our proposal to condition or deny authorizations that implicate the factors noted here, and on any conditions that would be appropriate short of denial of such authorizations.

b. Spectrum Availability and Technical Coordination

38. In the *DISCO II* Notice, we stated that we are often faced with more applications for proposed satellites than we can accommodate in the available spectrum. We stated that, in such cases, we would not be able to offer access to all non-U.S. satellites any more than we could license all proposed U.S. satellites. Likewise, in the case where the maximum number of systems are already licensed, we would not be able to offer access to

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[31] Reference Paper at 1.2.

[32] 47 U.S.C. § 309(a).

[33] *See, e.g.*, 19 U.S.C. § 3512(c).

any new entrants.[34] In assigning scarce frequencies or orbit resources, we proposed in the *DISCO II* Notice to treat non-U.S. satellites as we would U.S.-licensed satellites, assuming they satisfy the ECO-Sat test (where applicable). Further, in a service for which U.S. satellites have already been licensed, we would not expect to authorize a non-U.S. licensed satellite to serve the United States if grant would create debilitating interference problems or where the only technical solution would require the licensed systems to significantly alter their operations. We believe that these kinds of spectrum management decisions are consistent with the WTO Basic Telecom Agreement. We request comment on this tentative conclusion.

c. Compliance with Commission Rules and Policies

39. To ensure that operations with non-U.S. satellites do not interfere with licensed operations in the United States and are otherwise consistent with Commission policy, we proposed in the *DISCO II* Notice to require non-U.S. systems to meet all technical and service rules contained in Part 25 and Part 100 of the Commission's rules. The WTO Basic Telecom Agreement does not affect this proposal, which is consistent with U.S. commitments to national treatment and most-favored-nation obligations. For example, non-U.S. geostationary satellite orbit (GSO) satellites seeking to provide fixed-satellite services in the C-and Ku-bands in the United States must comply with 2° orbital spacing parameters, the cornerstone of our GSO orbit assignment plan.[35]

40. Similarly, "Big LEO" systems must be capable of providing service throughout the United States at all times.[36] Allowing non-U.S. Big LEO satellites to provide service in the United States on a non-ubiquitous basis would defeat this orbital efficiency policy and also place U.S. firms at a competitive disadvantage.

41. Another service rule we impose on U.S. operators providing international service is contained in a condition to their licenses. This condition prohibits them from entering into exclusionary arrangements with other countries for satellite capacity for a particular service. Thus, U.S. Big LEO licensees cannot arrange with a particular country to be its exclusive provider of Big LEO services.[37] The Commission also prohibits U.S.

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[34] *DISCO II* at para. 50.

[35] Licensing of Space Stations in the Domestic Fixed-Satellite Service, CC Docket No. 81-704, *Report and Order*, FCC 83-184, 54 Rad. Reg. (1983), 48 Fed. Reg. 40233 (September 6, 1983).

[36] 47 CFR § 25.143(b)(2)(iii).

[37] In the Matter of the Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band, 11 FCC Rcd 12861 (1996), at paras 54-55. *See also* 47 C.F.R. § 25.143(h) (prohibits Big LEOs from entering into exclusionary

satellite operators that provide international services from acquiring rights to operate space or earth stations that are denied to other U.S. companies. We view these sorts of arrangements to be antithetical to our goals for fostering innovation and maximizing competition for the benefit of end users.

42. To advance these same goals, we propose to extend this prohibition to non-U.S. licensed satellites that serve the United States. This is consistent with the Reference Paper, which requires a non-discriminatory interconnection regime between suppliers.[38] This may require that an authorization granted to a non-U.S. licensed satellite to serve the U.S. market be conditioned on that satellite not providing service between the United States and any country with which such satellite has entered into exclusionary arrangement. We seek comment on whether such a policy should apply to all authorizations we grant for access to non-U.S. satellite systems, whether for WTO or non-WTO member systems, or for covered or non-covered services. We also ask that commenters specifically address whether such a policy is appropriate with respect to both fixed-satellite and mobile satellite services.

43. In the alternative, an authorization could be granted subject to the broader condition that the licensee may not serve the U.S. market so long as it maintains exclusionary arrangements with any foreign country. This policy could be implemented by imposing a condition on authorizations such that violation of the policy would result in revocation of the authorization to serve the United States using the non-U.S. satellite system. Either of these policies may entail reporting or licensing requirements to ensure that the Commission remains aware of such practices. We seek comment on these proposals, and ask that commenters specifically address whether any additional requirements would be necessary to enable the Commission to enforce the proposed policies.

44. In sum, we propose to apply all applicable Commission rules and policies to all non-U.S satellite systems that are eligible to serve the United States. We seek comment on this proposal. Commenters disagreeing with this proposal should explain, with specificity, which rules or policies should not be applied to non-U.S. licensed systems and how the public interest goals underlying these rules and policies will not be compromised by permitting these departures.

d. Foreign Ownership

45. Finally, we recognize that the WTO Agreement, together with the explosive growth of international satellite networks, is likely to increase the presence of foreign ownership in satellite facilities that serve the United States. In the *DISCO II* Notice, we did not propose to require a non-U.S. satellite system to obtain a Title III license for its space

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arrangements to serve particular countries).

[38] Reference Paper at 2.2.

station or to hold the Title III licenses we issue for earth stations to communicate with that system. Because the foreign entity would hold no U.S. license, Section 310 of the Act would not apply to non-U.S. licensed space stations.

46. To the extent that there are earth station authorizations and Section 310 is applicable, we propose to adopt the approach outlined in the Order and Notice of Proposed Rulemaking on Foreign Participation in the U.S. Telecommunications Market regarding Section 310.[39]

C. Procedures for Considering Access by Non-U.S. Satellite Operators

47. As we stated in the *DISCO II* Notice, we do not intend to require non-U.S. licensed space stations to obtain a separate (and duplicative) license from the United States before serving the U.S. market. Rather, we tentatively concluded that we should regulate access to the United States by non-U.S. satellites primarily through the earth station process.[40] In light of comments to the *DISCO II* Notice and our MFN and national treatment commitments under the Agreement, we have further refined our proposed approach.

48. In essence, we envision that non-U.S. satellite operators will use one of two procedures in order to bring before us their requests to serve the United States. The first would be through participation in a U.S. space station processing round. As described in greater detail below, a non-U.S. licensed satellite operator could provide a "letter of intent" to participate in a U.S. satellite processing round or, alternatively, could file an earth station application to access a non-U.S. licensed satellite in the context of a processing round. In that case, our primary consideration is how best to assign the orbit/spectrum resource among the competing space station applicants.

49. The second procedure would involve the earth station licensing process and would not implicate other applications. We expect that this procedure will be used where an earth station located in the United States seeks to access a non-U.S. satellite that is already licensed and/or coordinated in accordance with ITU regulations. In that case, our primary considerations are (1) whether grant of the earth station license would cause technically unacceptable interference to other licensed operations in that band, and (2) whether the

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[39] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* FCC 97-195, released June 4, 1997. The application of Section 310(b) to foreign ownership in U.S. space station licensees operating as common carriers is also addressed in this proceeding. As noted, the issue of foreign ownership with respect to U.S. licensed DTH-FSS and DBS services will be resolved in separate Commission proceedings. *See* para. 22, *supra.*

[40] *DISCO II* at para. 14.

application would otherwise be consistent with our rules and policies for that particular satellite service. We discuss each of these procedures in more detail below.

1. Non-U.S. Participation in U.S. Space Station Processing Rounds

50. In the *DISCO II* Notice, we proposed that non-U.S. licensed satellite operators could participate in a U.S. satellite processing round by filing an earth station application to access the non-U.S. satellite by the cut-off date for consideration in that round.[41] We also proposed that the earth station application include an exhibit containing the same information about the non-U.S. space station that must be submitted in accordance with Parts 25 or Part 100 of the Commission's Rules. We would then examine the application to ensure that operations of the earth station and the space station to be accessed would comply with all Commission policies and regulations, including technical parameters; that the applicant met all Commission requirements; and that grant of the license would serve the public interest, convenience, and necessity.[42]

51. Subsequently, we concluded that this might not be practical in those cases where the satellite operator will not be involved in ground segment operations, for example, where a separate entity will be the service vendor or earth station operator. Consequently, on April 16, 1997, the International Bureau issued a Public Notice indicating that entities could alternatively file a "letter of intent" to participate in a processing round by submitting the same information that would be required of U.S. space station applicants.[43] This alternative procedure would allow all prospective non-U.S. systems to participate in U.S. space station processing rounds, including those that will not provide services to end-users.

52. We propose here that non-U.S. licensed satellite systems be eligible to participate in a processing round through either of these two procedures as long as the non-U.S. satellite is licensed by a foreign administration or its operator is pursuing a license from that administration. We seek comment on whether these procedural options, or any others, are appropriate based on the specific service being considered, or based on the status of the non-U.S. space station seeking access to the U.S. market (*e.g.*, in-orbit, licensed and/or coordinated in accordance with ITU regulations or pursuing a license from another administration). Commenters on these points are requested to take into particular account the U.S. commitment to national treatment under the WTO Basic Telecom Agreement.

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[41] *DISCO II* at para. 18.

[42] Regarding this last factor, we are proposing here to apply an ECO-Sat analysis to non-WTO member satellites, as discussed above. *See* paras. 23-24, *supra.*

[43] *Public Notice*, "International Bureau announces anticipated procedures for foreign satellites to be considered in processing rounds," Report No. SPB-80 (released April 16, 1997).

53. Once a request for U.S. access through a non-U.S. licensed satellite is properly before us, we propose to consider it as part of the processing group, together with any applications for U.S.-licensed satellites that are properly filed.[44] If, in processing that group, we authorize a non-U.S. satellite to serve the United States (applying an ECO-Sat test to non-WTO member satellites), we will provide this authority as a "reservation" or "designation" of frequencies or orbit locations or both, as appropriate, in the earth station license, or, in the case of a "letter of intent," in the service Report and Order. We reiterate our intent to hold the non-U.S. satellite operator to the same rules as we do our U.S.-licensed space station operators.[45] Failure to comply with these requirements could result in revocation of the earth station license or reassignment of previously reserved or designated spectrum or orbit locations. We seek comment on these aspects of our proposal.

54. Failure by a non-U.S. licensed system to take advantage of the opportunity to participate in a U.S. processing round would, of course, raise the risk that spectrum or orbital resources will not be available to access the U.S. territory if that system later seeks coordination for U.S. service. We do not propose, however, to require participation in U.S. processing rounds as a prerequisite to allowing access to the United States. The process of international coordination through the International Telecommunication Union represents a set of obligations and procedures that is separate from U.S. licensing proceedings. Systems that are coordinated under ITU procedures would be able to access the United States through the earth station licensing processing, as described below. However, the Commission's satellite processing rounds would continue to be the primary vehicle for assigning satellite spectrum. Systems seeking coordination outside this process would be accommodated to the extent possible after taking into account rules and policies adopted in U.S. processing rounds.

2. Access to Non-U.S. Satellites via Earth Station Licensing Process

55. As an alternative to the procedure described above, operators seeking to access a non-U.S. satellite could file an earth station application that we could consider independent from a processing round. This would occur where the non-U.S. satellite is already launched and international coordination for that satellite has been initiated. For example, if an operator sought to use an in-orbit satellite operating in geostationary satellite orbit to provide service in

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[44] Applicants wishing to use non-U.S. licensed satellites will generally be required to provide the information listed in Section 25.114 of our rules. We will however, not require foreign applicants to provide financial information if the non-U.S. licensed satellite is in-orbit and operating or to provide technical information when the international coordination process for the non-U.S. satellite has been completed. *See* note 50, infra.

[45] *See* paras. 39-44, *supra.*

the United States, we would consider that application without initiating a processing round. We request comment on this proposal.

56. In light of the WTO Basic Telecom Agreement, we also ask whether we should revisit our proposals in the *DISCO II* Notice with respect to receive-only earth stations. Because receive-only earth stations are passive and cannot cause interference to other radio stations, we eliminated, over ten years ago, the licensing requirement for receive-only stations operating with domestic U.S satellites. We continued to require licenses for those receive-only stations operating with U.S. satellites where the transmissions originate outside of the United States or where the station is receiving transmissions from a non-U.S. satellite.[46] In the *DISCO II* Notice, we proposed to eliminate the licensing requirement for *all* receive-only earth stations operating with U.S. satellites, regardless of where the transmission originates. We also proposed to retain the licensing requirement for receive-only stations operating with non-U.S. satellites. We noted that licensing was needed in these cases to ensure that the station's operation would facilitate competition in the United States by considering public interest factors such as equivalent competitive opportunities in the home market and content regulation. Such licensing is also the only regulatory point available to the Commission, as we do not issue U.S. licenses to space stations licensed or coordinated by other administrations.

57. We ask here whether this approach should still be adopted, in light of our MFN and national treatment obligations under the GATS. Significantly, we know of no other widespread use of receive-only antennas other than direct-to-home video services, both FSS - DTH and DBS, which are not covered in the U.S. schedule of commitments under the WTO Basic Telecom Agreement. DARS receive-only antennas would similarly be exempt from the WTO Basic Telecom Agreement. Consequently, we propose to continue to license receive-only stations operating with non-U.S. satellites, whether provided via WTO or non-WTO member satellites, consistent with the U.S. exemption from most-favored-nation obligations under the WTO Basic Telecom Agreement for these services. Commenters should analyze whether, and to what extent, receive-only antennas are being used to provide covered services and, if so, whether it is useful and feasible to eliminate these antennas from the licensing requirement. If we do carve out an exception for these receive-only stations, should we adopt reporting requirements to ensure that DTH-FSS, DBS and DARS services are not being provided over these antennas? We ask commenters to suggest mechanisms for enforcing these service limitations, including possible fines or other sanctions.

58. We seek additional comment on other proposals in the *DISCO II* Notice relating to licensing procedures for receive-only earth stations. We proposed in the DISCO II Notice to allow anyone wishing to operate a receive-only earth station with either a U.S. or non-U.S. satellite to request blanket authority to operate multiple technically identical receive-

[46] *See* 47 C.F.R. § 25.131(j).

only earth stations in a particular service. In the Notice, we also stated that our rules permit receive-only earth stations to operate with the INTELSAT K satellite[47] and receive INTELNET I services from INTELSAT satellites without obtaining a license.[48] We ask for comment on whether to continue to exempt such receive-only earth stations from obtaining a license or to begin requiring that any new provision of such service be subject to the Commission's licensing process, including an ECO-Sat analysis, if applicable, for access to IGO satellites.

59. Finally, the ITU World Telecommunications Policy Forum ("WTPF") held in October 1996 addressed the issues regarding implementation of global mobile personal communications by satellites ("GMPCS"). The WTPF adopted a draft Memorandum of Understanding to establish a working group to develop arrangements to facilitate the implementation and free circulation of GMPCS terminals. These arrangements may involve mutual recognition of class or blanket licensing, through type approval and marketing, and recommendations to customs officials on the potential relaxation of requirements for roaming with a GMPCS terminal.[49] We invite comment on the implications of WTPF and GMPCS developments, if any, on the Commission's licensing process.

3. Filing Requirements

60. In proposing the "letter of intent" and earth station application procedures, we recognize that several commenters to the *DISCO II* Notice said our framework for considering access to non-U.S. licensed satellites could be perceived as re-licensing non-U.S satellite systems. We also recognize our GATS obligations to apply most-favored nation and national treatment principles in authorizing non-U.S. satellites to serve the U.S. market. We tentatively conclude that requiring applicants that seek to use non-U.S. licensed satellites to provide service in the United States to provide the same information that we require for U.S. systems is consistent with our GATS obligations.[50] The technical and legal information submitted by existing applicants is used, among other things, to perform spectrum

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[47] Communications Satellite Corp. Request for Waiver of Section 25.131(j) of the Commission's Rules as it Applies to Services Provided via the INTELSAT K Satellite, 7 FCC Rcd 6028 (1992) (granting waiver), application for review pending. The pending application for review will be addressed in the Report and Order in this proceeding.

[48] 47 C.F.R. § 25.131(j).

[49] The final MOU, approved on Feb. 14, 1997, is being circulated for signature by administrations and other ITU members.

[50] We will not, however, require foreign applicants to provide financial information if the non-U.S. licensed satellite is in-orbit and operating or to provide technical data when the international coordination process for the non-U.S. satellite has been completed.

management functions, review legal qualifications, and to evaluate additional factors relevant to whether grant of an application would be in the public interest. Failure to require this information would seriously hinder the Commission's analysis of whether the public interest would be served in authorizing access to non-U.S systems, both in terms of determining compliance with Commission rules and of examining obligations under the GATS, and could constitute treatment more favorable for non-U.S. systems than for applicants seeking U.S. space station licenses.[51] We seek comment on this tentative conclusion.

4. Changes to Application Form

61. In the DISCO II Notice, we sought comment on what changes we should make to FCC Form 493 (Application for Earth Station Authorization or for Modification of Station License) in order to ensure that an earth station application involving a non-U.S. satellite system will provide sufficient information to enable us to apply the ECO-Sat test. We note that we have adopted a new Form 312 to replace Form 493.[52] We indicated in the Notice that the information solicited could include the service to be provided, the country in which the satellite is licensed or will be licensed, countries in which signals carried over the earth station would originate or terminate, or an exhibit demonstrating that no *de jure* or *de facto* barriers were present in the relevant home and route markets.[53] We also sought comment on the need to obtain information demonstrating that a non-U.S. licensed system meets all technical, financial and legal requirements for the service to be provided.[54]

62. We renew our request for comment on any changes we should make to our earth station application form. Consistent with our proposal to continue to apply the ECO-Sat test to non-WTO member satellites, IGO satellites, and non-U.S. satellites that deliver DTH-FSS, DBS, or DARS, we seek comment on whether Form 312 should be modified to include the information referenced above and in the *DISCO II* Notice, or to include any other information relevant to the ECO-Sat test as ultimately adopted in this proceeding. We seek comment on any other modifications to Form 312 that may be appropriate in considering

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[51] *See DISCO II* at para. 53 (absent a demonstration of compliance with our rules, market entry by non-U.S. systems would distort our competitive policies, and jeopardize our spectrum management policies).

[52] *See Streamlining the Commission's Rules and Regulations for Satellite Applications and Licensing Procedures*, 11 FCC Rcd 21581 (1996), 62 FR 5924 (February 10, 1997) ("*Streamlining Order*")(modifying Part 25 of the Commission's rules and regulations regarding satellite earth and space station licensing, and adopting a new application form, FCC Form 312). New Part 25 rules and Form 312 became effective on April 21, 1997 when the Office of Management and Budget issued a notice approving the modified collection of information, OMB No. 3060-0678.

[53] *DISCO II* at para. 60.

[54] *DISCO II* at para. 61.

requests for the provision of service using any non-U.S. satellite system, whether for covered or non-covered services.

IV. CONCLUSION

63. In this Further Notice, we tentatively conclude that the public interest requires that we adopt uniform standards to determine whether a non-U.S. satellite system should be permitted to serve the United States. In proposing these standards, we wish to foster efficient and innovative satellite communications services for U.S. users through fair competition among multiple service providers, including non-U.S. service providers. In recognition of the liberalization of the global telecommunications market under the WTO Basic Telecom Agreement, we propose to rely on competitive market forces rather than an analysis of effective competitive opportunities abroad in evaluating requests to serve the United States using WTO member satellite systems. To ensure our ability to use telecommunication standards in the United States where the WTO Basic Telecom Agreement does not apply, we propose to apply an ECO-Sat analysis where requests to serve the United States involve non-WTO satellite systems, IGO satellite systems, or services exempt from most-favored-nation obligations under the WTO Basic Telecom Agreement. In proposing this framework, we aim to promote greater market access, to foster fair competition, and to ensure lower prices, better service, and more innovative service offerings for U.S. users and competitors.

V. PROCEDURAL ISSUES

64. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

65. This Further Notice contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due on or before on or before 60 days from publication in the Federal Register. OMB comments are due on or before 60 days from publication in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of

the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

66. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before August 21, 1997 and reply comments on or before September 5, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file five additional copies. Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street N.W., Washington, D.C. 20554.

67. Written comments by the public on the proposed and/or modified information collections are due to Commission on or before on or before 60 days from publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Performance Evaluation and Records Management Branch, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov. OMB is required to make a decision concerning the modified collection of information contained in this Further Notice between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. However, written comments on the proposed and/or modified information collections must be submitted to the Office of Management and Budget (OMB) on or before 60 days after publication in the Federal Register.

68. This is a permit but disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

69. For further information concerning this rulemaking contact Fern Jarmulnek, (202 418-0751), William Kirsch (202 418-0764) or Robert Calaff (202 418-0431) of the International Bureau, Federal Communications Commission, Washington, D.C. 20554.